

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE  
NO. 02-466, JUDGE JOHN RENKE, III

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SC03-1846

**TRIAL BRIEF ADDRESSING**  
**AMENDED FORMAL CHARGE II**

**COMES NOW** Respondent, **JUDGE JOHN RENKE, III**, by and through his undersigned counsel, and hereby files this, his Trial Brief Addressing Amended Formal Charge II, and states the following:

**FACTS**

1. Amended Formal Charge II asserts that the picture of John Renke seated behind the SWFWMD sign with the designation “Chair” in front of him was a knowing and purposeful misrepresentation because it suggested that he was the chair of the Southwest Florida Water Management District.

2. John Renke, III, was appointed to serve on the SWFWMD Governing Board in March 1999. His position as a member of the Governing Board required him to also sit as chair *ex officio* of the Coastal Rivers Basin Board, a regional sub-board, also comprised of governor appointees. During his time on the Governing Board, John K. Renke, III, served on the Governing Board’s Resource Management & Development Committee, and served as chair of the Governing

Board's Planning Committee. He also served as an administrative hearing officer on behalf of the Governing Board.

3. Lou Kavouras, Executive Assistant at the Southwest Florida Water Management District formerly served as the Director of the Boards and Executive Services Department during Mr. Renke's tenure on the Board. At that time, her primary responsibilities were to direct, supervise, and monitor the administrative services to the District Governing Board, the eight Basin Boards, and the Office of the Executive Director.

4. The Coastal Rivers Basin Board met every other month, primarily at the District headquarters in Brooksville, using the facility's boardroom. The Governing Board Planning Committee also met in the same boardroom. Ms. Kavouras and her assistants set up the boardroom prior to the meetings, by inserting nameplates in holders in front of the dais, indicating officer position or simply "member." Nothing obscures the SWFWMD logo on the back of the boardroom wall whether it was a Basin Board meeting or a Governing Board meeting since both are part of SWFWMD.

5. Exhibit A attached to the Notice of Amended Formal Charges shows Judge Renke seated at the District Headquarters in Brooksville. The picture accurately depicts Judge Renke's position as chairing the Governing Board Planning meeting. The Governing Board Planning Committee met in the

boardroom on July 30, 2002. On that date, Mr. Renke was present and chaired the committee meeting.

6. John Renke III would also be positioned in that seat for a Coastal Rivers Basin Board meeting indicating his position as chair of the Basin Board and the district logo would be behind him. However, since Heidi McCree did not serve on the Coastal Rivers Basin Board and her nameplate appears in the picture, the picture is more consistent with John Renke, III chairing the Planning Committee meeting.

7. Members of the public are permitted to and do attend the Coastal Rivers Basin Board and Governing Board Planning Committee meetings. (Exhibit 1).

### **ARGUMENT**

Special Counsel has the burden of proving any violations of the charged Judicial Canons by clear and convincing evidence. Florida courts define the term 'clear and convincing evidence' as follows:

[T]he evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

The picture and text referenced by Amended Formal Charge II are not misleading. The text in Exhibit A correctly described Judge Renke's experience on SWFWMD and the picture of Judge Renke on the dais with the nameplates accurately depicted his position in the facility's boardroom as chairing the Governing Board's Planning Committee. Judge Renke simply included this picture as a snapshot showing him "on the job." Most respectfully, if a recipient of Exhibit A would be misled by the picture and the text, any member of the public who attended a Coastal Rivers Basin Board meeting or a Governing Board Planning Committee meeting would be similarly deceived because they would have observed Judge Renke underneath the SWFWMD sign with the designation "Chair" underneath his name on the nameplate. Judge Renke never contemplated that a truthful depiction of him serving on the District would be construed as a knowing and purposeful misrepresentation. Judge Renke did not intend to misrepresent his position on SWFWMD and thus, did not knowingly misrepresent his qualifications. Consequently, the JQC cannot meet its burden of proving a violation of Canon 7A(3)(a) and 7A(3)(d)(iii) by clear and convincing evidence.

Moreover, even if the text and the picture are construed to be misleading, they are protected judicial campaign speech as defined by Weaver v. Bonner, 309

F.3d 1312 (11<sup>th</sup> Cir. 2002), and thus, cannot subject the judge to discipline. The JQC is attempting to prove a violation of Canon 7A(3)(a) and Canon 7A(3)(d)(iii) by arguing that even though the picture and text are accurate, the mailer is misleading. However, such analysis was specifically rejected by the Weaver Court in striking down the Georgia judicial code provision that prohibited “true statements” in campaign speech if they were deemed “misleading or deceptive or contain[ed] a material misrepresentation or omit[ted] a material fact.”

Because the picture and the text were truthful representations of his experience serving the District, the JQC cannot prove Amended Formal Charge II by clear and convincing evidence.

Respectfully submitted,

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SCOTT K. TOZIAN, ESQUIRE  
Florida Bar Number 253510  
GWENDOLYN H. HINKLE, ESQUIRE  
Florida Bar Number 83062  
SMITH, TOZIAN & HINKLE, P.A.  
109 North Brush Street, Suite 200  
Tampa, Florida 33602  
813-273-0063  
Attorneys for Respondent

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this \_\_\_\_ day of September, 2005, the original of the foregoing Trial Brief Addressing Amended Formal Charge II has been furnished by electronic transmission via [e-file@flcourts.org](mailto:e-file@flcourts.org) and furnished by

FedEx overnight delivery to: Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; and true and correct copies have been furnished by hand delivery to Judge James R. Wolf, Chairman, Hearing Panel, Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; Marvin E. Barkin, Esquire, and Michael K. Green, Esquire, Special Counsel, 2700 Bank of America Plaza, 101 East Kennedy Boulevard, P. O. Box 1102, Tampa, Florida 33601-1102; Ms. Brooke S. Kennerly, Executive Director, Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; John R. Beranek, Esquire, Counsel to the Hearing Panel, P.O. Box 391, Tallahassee, Florida 32302; and Thomas C. MacDonald, Jr., Esquire, General Counsel, Florida Judicial Qualifications Commission, 1904 Holly Lane, Tampa, Florida 33629.

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GWENDOLYN H. HINKLE, ESQUIRE